Respondee	Date received	Page
Department for Transport	9/11/2017	2
HS1 Ltd	10/11/2017	3
Network Rail	10/11/2017	7
Go-Ahead Group	10/11/2017	10
Eurostar International Ltd	10/11/2017	13
DB Cargo	10/11/2017	21
GB Railfreight	12/11/2017	30

Stuart Nicholls
Commercial Manager, HS1
Rail Group
Passenger Services
Department for Transport

Department
for Transport

Debbie Daniels
HS1 Planning Manager
Office of Rail and Road
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8th November 2017

Via email only

Dear Debbie

Periodic Review 2019 (PR19) Initial Consultation for HS1 Limited

Thank you for publishing an initial consultation on your proposed approach to the PR19 of HS1 Limited, and inviting comments to specific areas of focus for the periodic review.

The Department welcomes the approach ORR are taking to PR19, particularly in adopting a progressive approach which is supportive of HS1's programme of stakeholder engagement workshops aimed at working through the key issues in a collaborative and constructive manner.

We are pleased to see acknowledgement of the work done to align the timescales with the HS1 Stations Periodic Review which the Department will commence in the coming months.

We have no specific comments to make on the questions posed in the consultation, and look forward to seeing the final approach document in the New Year.

Yours sincerely

Stuart Nicholls

Commercial Manager, HS1

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By email: PR19@orr.gsi.gov.uk

10 November 2017

Dear Sir / Madam

PR19 Initial Consultation

The Periodic Review of HS1 Ltd is clearly of great importance to us and we welcome the opportunity to input into this initial consultation around the ORR's proposed approach and timetable. We have been proactively engaging with stakeholders to make sure the review works well. We set out our answers to the specific consultation questions below, and our summary key messages are as follows:

- We strongly endorse the proposal that *"…the overarching objective of PR19 is to ensure the long-term sustainability of the network."* We consider that this summarises the various duties and obligations on us as set out in the Concession Agreement and which governs how PR19 operates.
- We agree with the overarching approach to the review, including the timescales and key workstreams. It is consistent with the considerable work we have been doing to prepare.
- It is critical to our shareholders – and the integrity of the Concession Agreement – that the review does not look to modify the allocation of risks between TOCs and HS1 Ltd away from what is set out in the Concession Agreement itself.
- We have a very strong view that we should NOT review the approach to indexing OMRC for inflation. This is a key underpinning to the Concession and modifying the approach would cause considerable problems for our shareholders.

Q1. Do you have any comments on the timetable or the structure of the 5YAMS

We agree with the ORR's description of the PR19 timetable, and the likely key components of the 5YAMS. We also agree with the earlier chapters that describe the ORR's role, and the framework for the conduct of the review.

This is consistent with the work that we and NRHS have already started, and the way that we have mapped out the PR19 'themes' and topics for our quarterly stakeholder sessions. We expect the issues and approach to evolve over the course of the review period based on our analysis and the feedback of stakeholders.

As well as the topics listed in paragraph 4.12, the 5YAMS will also likely contain a description of the regulatory framework, including the structure of charges and the approach to performance and possessions regimes. These issues are mentioned elsewhere by ORR.

In keeping with our general approach to avoid surprises and to get stakeholder input to what we do, we plan to share an outline of the headings of the 5YAMS at an early stage to get feedback and to identify any omissions.

Q2. Do you think that HS1 Ltd should present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges?
Improving our approach to 'optionality' was a key learning from CP2 and is a constant point of discussion with operators. This is clearly a difficult thing to do, and it isn't possible to build a continuous relationship between cost and performance without introducing spurious accuracy.

However, through the design of our Specific Asset Strategies, and consideration of 'strategic choices' we aim to present some tangible choices for operators so that we can deliver the best overall package of service. Some of the options are likely to be about cost differences, others might be about relative service offerings. Though not directly relevant to this discussion, it is a conversation we are having across Stations as well.

Finally, our analysis and modelling aims to explore the relationship between the timing of interventions and the impact on the long-term sustainability of the assets.

Q3. Do you have any comments on benchmarking for PR19?
As noted by ORR, we have a comprehensive programme of work underway and planned to explore possible efficiencies. The focus is on whole-life cost but we recognise the challenge from operators and other stakeholders around the need for short-term cash savings as well. This efficiency programme includes benchmarking, and a range of other activity looking at the question from different angles in a proportional manner. It will cover our approach to the HS1 supply chain, and how we have exercised any powers under the legacy contracts we inherited through Concessioning.

We set out our proposed work programme on efficiency at the stakeholder workshop on 19 October.

Q4. Do you have any views on the structure of charges for CP3, particularly to incentivise efficiency?
We are keen to understand stakeholder views on this point. As with CP2, the structure of charges has not been a big issue for operators so far in discussions, and the method of allocating costs between operators appears to be well-understood. One area we are likely to review in more detail is around how we capture the impact of different types of rolling-stock, and the weighting given to that element in the cost allocation process.

There doesn't appear to be any major opportunities to improve the incentivisation of efficiency through changes to the structure of charges.

Q5. Do you have further thoughts and ideas on the ways in which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism?
We welcome ideas in this area. One of the advantages of HS1 is the relatively small number of operators which allows us to engage in a number of formal and informal joint-working activities, for example the 'Engineering Together' meeting. We also seek to work jointly across the infrastructure boundaries. We are always keen to understand ways we can improve our approach.

Q6. Do you think there are any other regulatory issues that emerge from HS1 Ltd's approach to contracting out the operation and maintenance of its network to Network Rail (High Speed) Ltd?
We don't see any regulatory issues emerging. The contracting out of operation and maintenance was a fundamental part of the structure of the Concession, and we continue to work with our delivery partners and to exercise the powers in the contracts we inherited in order to secure the best service for operators and to fulfil our asset handback obligations.

Q7. Do you have any comments on our approach to Ripple Lane as part of PR19?
We agree that the ownership of Ripple Lane is not a matter for direct ORR involvement or decision-making. We are pursuing discussions with NRIL and others about this matter which is extremely important for our freight customers.

ORR must, of course, have cognisance of the outcomes of any discussions about the transfer of Ripple Lane within the wider determination as this will impact on freight charges, for example.

Q8. Do you have any comments on the performance regime and do you agree that HS1 Ltd should undertake a wholesale review of it?
This is a useful question as we are also keen to understand the appetite for change. In CP2 this was an area that stakeholders considered worked well, so we are keen to learn of any change in outlook and how we might address.

Q9. How could the financial framework better incentivise efficient management of risk?
We are always keen to work better with parties, and provide transparency about our decision-making. We have devised ways to better involve operators in key decisions – for example around the investment of monies within the escrow. We welcome any ideas about how to improve this.

That said, any ideas must be within the risk allocation as set out in the Concession Agreement – our shareholders cannot consider any change to this.

Q10. Recognising the constraints of the Concession Agreement, what are your views on the allocation of risk between the TOCs and HS1 Ltd?
We have set out our views on this at length as part of CP2 and in subsequent discussions. As with the answer to Q9, the fundamental point for our shareholders is that the allocation of risk is as set out in the Concession Agreement. PR19 cannot start with a blank piece of paper and consider how parties now think the risk 'should' be allocated – this decision has been made by Government in the establishment of the Concession arrangements.

Q11. Do you consider there are any other issues that we should take into account?
No other issues. We agree that it is essential we have a robust approach to the 40 year renewals forecast, and we are engaging in a wide-range of analysis, including the 'Deliverability' study which was discussed with stakeholders at our 19 October quarterly workshop.

Q12. How do you think that we can develop our approach to measuring and monitoring HS1 Ltd's efficiency?
We agree that it is important that we have a better variance framework in place for CP3 – building on the initial ideas that we have discussed, and the experience of actual variance in renewal projects during CP2. We agree with ORR that it has to be the nexus of 'sufficiently robust' but not 'too complicated' – a difficult balance to strike.

The starting point is to agree on the level of detail to be included within the renewals estimates, as it is this information that forms the base against which subsequent variances are calculated.

We look forward to ongoing discussions around this important area.

Q13. Should we review the approach to indexing the OMRC for inflation?
Indexation according to RPI is a fundamental part of the Concession, and we strongly oppose any moves to change this.

No part of this response is confidential. We welcome this important Initial Consultation document, and look forward to productive ongoing discussions with stakeholders.

Yours sincerely

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Dear Debbie,

Network Rail Infrastructure Limited's response to ORR's Periodic review 2019 (PR19) initial consultation for HS1 Limited

This letter sets out Network Rail's response to ORR's initial consultation on the 2019 Periodic Review of High Speed 1 Limited (HS1 Ltd). We welcome the opportunity to comment on ORR's consultation.

We recognise that many of the issues in ORR's consultation are detailed and specific to HS1 Ltd. Therefore, we have only responded to the questions that may have implications on the wider rail network or where we have specific experience.

Q1: Do you have any comments on the timetable or the structure of the 5YAMS?

Network Rail welcomes ORR's inclusive approach to engagement with industry to date and considers this an important part of a periodic review. It would, therefore, be useful for ORR to provide more clarity on its approach to industry engagement for the rest of PR19.

We welcome DfT and ORR aligning the timeline for reviewing Route Infrastructure and Stations, as this supports a more efficient approach to engagement during the review process as it reduces the burden on the industry as a whole.

Network Rail is working closely with HS1 Ltd and is fully committed to supporting HS1 Ltd in developing its plans for CP3 and inputting into the periodic review process in the timescales set out in the consultation. Network Rail's submission for the 5YAMS is intended to follow a similar structure to the SBP submission we will make for PR18, subject to further engagement with HS1 Ltd and the ORR.

Q2: Do you think that HS1 Ltd should present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges?

We support HS1 Ltd exploring opportunities to make efficiencies where appropriate, which could include maintaining lower levels of asset performance in CP3. However, in reality, it is likely to be very difficult to tailor performance to cost. Additionally, whilst maintaining lower levels of asset performance is likely to provide savings to HS1 Ltd and train operators in the short term, it is important to consider the impact on safety, performance levels and the overall sustainability of the rail infrastructure over the long term.

Q3: Do you have any comments on benchmarking for PR19?

Network Rail recognises the difficulty of carrying out a meaningful benchmarking process to support the development of the 5YAMS. We have, therefore, set out below a number of suggestions which should support HS1 Ltd's benchmarking process:

- HS1 Ltd's network is the only high speed line in the UK at present, so more relevant comparisons could be made with the rail network in Europe.

- It is important to account for differences between infrastructure managers when completing the benchmarking process, to ensure a like-for-like comparison. This includes taking into account, for example, different output levels, asset condition and accounting policies.

Recognising the difficulty in delivering a meaningful benchmarking process, we consider that ORR and HS1 Ltd should not over rely on benchmarking to inform the 5YAMS submission in PR19.

Q4: Do you have any views on the structure of charges for CP3, particularly to incentivise efficiency?

Network Rail considers that the charging approaches used by Network Rail and HS1 Ltd should, as far as possible, be informed by a consistent framework. However, we recognise that there are good reasons to depart from an identical charging framework because HS1 Ltd is such a different railway to Network Rail's.

Q5: Do you have further thoughts and ideas on the ways in which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism?

Network Rail welcomes the opportunity to work with and support HS1 Ltd and train operators developing proposals on how to maximize the effectiveness of the outperformance mechanism (to reduce operations and maintenance costs) and help drive out-performance.

Based on our experience of the Route Efficiency Benefit Sharing Mechanism (REBS), which was designed to strengthen the incentives between Network Rail and operators to work together and reduce infrastructure costs, we consider that a sharing mechanism should be simple, understandable and easy to administer in order for it to have a chance of achieving its intended purpose.

It is also important to consider the opportunities outside of a financial mechanism which could improve efficiency on the network. Based on our experience, smaller scale bespoke collaborative working arrangements between HS1 Ltd, train operators and Network Rail could deliver significant benefits and should be encouraged in CP3. For example, closer working arrangements could support the development of possession plans which could facilitate a more efficient delivery of planned maintenance work.

Q7: Do you have any comments on our approach to Ripple Lane as part of PR19?

We are currently working with HS1 Ltd to explore the feasibility of transferring ownership of Ripple Lane Exchange Sidings to Network Rail. If this transfer did take place, it will be necessary to make sure that we have sufficient funding to operate and maintain these assets in a safe and sustainable way.

Q8: Do you have any comments on the performance regime and do you agree that HS1 Ltd should undertake a wholesale review of it?

Whilst the interaction between HS1 Ltd infrastructure and Network Rail infrastructure is reasonably limited, it remains important that the performance regimes align to ensure incentives are in place on operators and infrastructure managers to reduce total delay.

Q9: How could the financial framework better incentivise efficient management of risk?

It is important that HS1 Ltd is only exposed to those risks that it is best able to manage. The CP3 financial framework should allow HS1 Ltd to continue to deliver a safe and sustainable railway, even in the event of cost shocks during the control period. There are a number of ways that risk can be handled, for example, by building explicit buffers in charges or including triggers that lead to re-opening a price control. In practice, a combination of such approaches could be used for CP3.

Additionally, it is important that the allocation of risk between Network Rail and HS1 Ltd is appropriate and reflects each organisation's ability to respond and manage risk in CP3.

Q12: How do you think that we can develop our approach to measuring and monitoring HS1 Ltd's efficiency?

We note that accurate efficiency measurement can be complex. For example, actual expenditure may be lower than baseline as result of the deferral of activity rather than due to 'true' efficiency savings.

It is therefore important that ORR considers the trade-off between increasing the complexity of its approach to measuring efficiency and the accuracy of the measure, as well as the resources required to report it.

Q13: Should we review the approach to indexing the OMRC for inflation?

HS1 Ltd like all other companies is exposed to the risk of increases in its cost base. We consider that RPI is a good measure of the general inflation that rail infrastructure managers face. The approach taken to indexation in CP3 should reflect the inflationary pressures that HS1 Ltd faces in its cost base. ORR's approach should also take into account the indexation approach used in other parts of HS1 Ltd's concession agreement and the rest of the industry, which is currently to index revenues and fares by RPI. Unless there has been a significant change in the inflation exposure of HS1 Ltd over CP2, we do not think that there is a need to review ORR's approach to indexing OMRC for inflation in CP3.

We confirm that we do not wish any part of this letter to remain confidential.

If you would like to discuss any aspect of our response, please contact me using the details above.

Yours sincerely,

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Head of Regulatory Economics

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10 November 2017

PR19 Initial Consultation for HS1 LTD

Thank you for the opportunity to respond to the PR19 initial consultation for HS1 Ltd.

Govia is one of the leading rail operators in the UK and is a joint venture between the Go-Ahead Group (65%) and Keolis (35%). Govia has extensive experience running complex and challenging rail operations. Govia currently runs three major rail franchises: Govia Thameslink Railway (GTR), Southeastern and London Midland. Govia is the UK's busiest rail operator, currently providing around 35% of all passenger journeys. As a key provider of rail services, in particular on the HS1 Ltd network, we welcome the opportunity to respond to your consultation on how HS1 Ltd will be regulated in the next Control Period.

This response represents the views of Southeastern and the Go-Ahead Group plc.

Question 1: Do you have any comments on the timetable or the structure of the 5YAMS?

We are supportive of the timetable and structure proposed for the 5YAMS, the consultation and development stage proposed is well received by Southeastern and lessons learned on the implementation of PR14 have been considered. The engagement sessions held by HS1 Ltd with its stakeholders have added value to date. However, the consultation stage having been brought forward is a concern given the impact on industry resources with many of the consultations and engagement sessions falling during the critical stages of the Periodic Review 2018 of Network Rail.

Question 2: Do you think that HS1 LTD Ltd should present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges?

We are supportive of seeking opportunities to balance performance risk against maintenance or renewal interventions that could reduce OMR costs. However, we are not supportive of sub-prime levels of asset performance on a railway network at a time when the whole industry is doing more with less and making efficiencies as well as maintaining asset performance. HS1 Ltd should not be an exception to this.

Question 3: Do you have any comments on benchmarking for PR19?

We note the difficulties around the lack of a direct comparison to HS1 Ltd that would assist in benchmarking on a like for like basis. Given ORR's role in the regulation of access to Eurotunnel and the asset is of similar age, albeit with its own physical and economic particulars; has the Eurotunnel infrastructure been considered as a comparator network for benchmarking?

Question 4: Do you have any views on the structure of charges for CP3, particularly to incentivise efficiency?

Given the absence of a second international operator and decreasing freight operator traffic; it is increasingly apparent the structure of changes is not incentivising efficient (or 'better') use of the HS1 Ltd network; rather the structure of charges acts as a disincentive for operators wishing to make use of existing capacity and paths on the HS1 Ltd network. We would question the requirement for a Capacity Reservation Charge on a railway that is operating with capacity to offer operators but the structure of charges is such that capacity is priced out of use.

Question 5: Do you have further thoughts and ideas on the ways in which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism?

We have no specific comments on how parties can work with HS1 Ltd to improve efficiency, we look forward to HS1 Ltd developing its proposals in this regard.

Question 6: Do you think there any other regulatory issues that emerge from HS1 Ltd's approach to contracting out the operation and maintenance of its network to Network Rail (High Speed) Ltd?

ORR has no power of regulation over Network Rail (High Speed) Limited (NR(HS)) that we are aware of as it is the subcontracted authority of HS1 Ltd. As NR(HS) Ltd is a private subsidiary of a public body (NRIL), with its senior reporting lines into the Network Rail South East Route; it is an anomaly that HS1 Ltd is exempt from the Strategic Business Plans that the NRIL SE Route will be developing as part of ORR's PR18 determination. This could be an area for review.

Question 7: Do you have any comments on our approach to Ripple Lane as part of PR19?

We have no comments on the approach to Ripple Lane as it is not infrastructure Southeastern operates passenger train services on.

Question 8: Do you have any comments on the performance regime and do you agree that HS1 Ltd should undertake a wholesale review of it?

A key area for review is the interaction between the performance regimes of HS1 Ltd and NRIL. Usage of the HS1 Ltd has matured in terms of Southeastern's operation of the Kent coast 'Rounder' services since 2015 where services typically begin journeys on HS1 Ltd and leave the network at Springhead Junction or Ashford. This means that delay minutes can be imported in/exported out of the HS1 Ltd network with the risk on the TOC even if the TOC is not the root cause of the delay.

Question 9: How could the financial framework better incentivise efficient management of risk?

Southeastern's experience of the management of financial risk on HS1 Ltd has seen cost-shock occur too often; with the changes in legislation related to Business Rates; EC4T consumption rates among passenger operators and the experience around the Specified Upgrade of the network related to GSM-R installation. HS1 Ltd has too often relied on franchise passenger operators passing through these cost shock items to railway funders rather than have robust risk management methods. As with asset outperformance; could a financial outperformance metric/target be considered where HS1 LTD too is managing its asset efficiently during uncertain economic times?

Question 10: Recognising the constraints of the Concession Agreement, what are your views on the allocation of risk between the TOCs and HS1 LTD Ltd?

Southeastern is comfortable on the present allocation of risk between TOCs and HS1 LTD Ltd in terms of the Escrow account and look forward to participating in the developing discussions.

Question 11: Do you consider there are any other issues that we should take into account?

We have no other issues to raise.

Question 12: How do you think that we can develop our approach to measuring and monitoring HS1 Ltd's efficiency?

Network Rail's efficiency monitoring has evolved significantly during CP5 with meaningful engagement with its TOC customers in the formation of Route Scorecards and metrics that sit beneath them. The scorecards provide a useful snapshot in the performance of the Route and this is a model that HS1 Ltd could consider using to measure its efficiency for the end (passenger) user.

Question 13: Should we review the approach to indexing the OMRC for inflation?

The consultation document indeed notes that regulated passenger fares are indexed by the Retail Price Index as are most costs and charges throughout the railway industry. As the only franchised passenger railway operator operating across both the NRIL and HS1 Ltd networks; Southeastern would not support a unique approach to annual inflation on HS1 LTD that is not replicated in the wider industry.

If you would like to discuss this response in further detail please contact Stuart Freer, Franchise & Access Manager (stuart.freer@southeasternrailway.co.uk).

Yours sincerely

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Managing Director, Rail Development

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8th November 2017

Dear Madam or Sir,

PR19: Initial consultation

Thank you for the opportunity to respond to the ORR's initial PR19 consultation.

Eurostar welcomes the transparent, open and inclusive manner in which HS1 and the ORR have engaged with stakeholders and looks forward to continued engagement and discussion throughout the periodic review process. We think that such an approach delivers the best outcomes for those who use and work on the railway. We consider it key that this periodic review process builds on the previous control period experience to deliver rigorous scrutiny and outcomes that demonstrate efficiencies and a robust set of incentives for Control Period 3.

We continue to strongly support the aim to deliver a safe and sustainable railway for all who use and work on HS1 Economic sustainability is an important element of this. As a commercial stand-alone operator of high speed international passenger services on HS1, the costs incurred by us are ultimately borne by passengers on HS1. The yields achievable within that market do not simple inflate year on year and Eurostar's own controllable costs are less than a third of our total infrastructure charges. So, for the system to remain sustainable, infrastructure must also reflect and respond to the economics of demand. To achieve this, it is key that an effective, efficient outcome is achieved. The review and challenge provided by the ORR as part of this process is critical.

In this first consultation response we have picked up on certain themes of interest for us including efficiencies, including the effective use of the detailed asset knowledge that HS1 Ltd has been able to gather during CP1 and CP2, and escrow account contribution incentives together with the mechanisms for addressing these. An important focus throughout is the incentives that are maintained on HS1 over the control period. There will be a natural desire for HS1 and its investors to seek to use the procurement process to insulate itself from the risks of the Control period outcomes. But we believe

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that maintaining a sensible risk exposure for HS1 itself in appropriate areas will be an important element in driving efficiency and performance.

Question 1

Do you have any comments on the timetable or the structure of the 5YAMS ?

The 5YAMS looks to pick up on the major areas to be covered in the review. Key of course will be the detail. We have fed our principal comments and areas of interest we expect to see covered in the 5YAMS in to HS1 through the helpful stakeholder workshops they have run so far and initial discussions we have had with them. We look forward to continuing this engagement and dialogue throughout the periodic review process.

We agree with the three separate process stages. The timetable appears to be set to the latest dates required in the Concession Agreement. Does this mean that the actual working dates will be earlier in order to allow for some room for movement ? This is ambitious, in particular in respect of the 5YAMS consideration stage as this is the stage that requires a scrutiny of the HS1 inputs, 5YAMS proposals and then production of a draft determination. We note that the ORR expects to conduct upfront work in the earlier stages so think this may be achievable as long as the inputs are available to the ORR to do this. More information on these plans would be helpful. The consideration stage is crucial to us. As a passenger service operator, we look to the ORR to leverage the expertise it has from the Network Rail process in order to provide strong, effective challenge and scrutiny on the inputs to the planning as well as the plans presented, in order that we can be assured that they deliver safe and efficient outcomes for all users of the railway. We would welcome further detail on the plans that the ORR has to review the input sums and assumptions that underpin the proposed outputs.

We note that the timetable for the stations review is due to be published later this year. We welcome the efforts to align these two review processes, as we believe this will provide an overall view of intended costs for OMRC and stations LTC. Whilst QX sits outside the formal regulatory boundary, there is a link between this and LTC as well as regulatory decisions on allocation. The forecasting and scope of QX has been an area of weakness, which we are working with HS1 to try and improve, and we believe that the ORR and DfT should be mindful of this context.

In relation to stations, we are also conscious that, in having separate processes relating to the same organisation, there is the possibility of inadvertent double counting in respect of certain items. We would like to understand the checks and balances in place between the ORR and DfT to confirm that there is no double counting occurring in these separate periodic reviews.

Question 2

Do you think that HS1 Ltd should present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges ?

We are in favour of presentation of options on a cost/performance basis. This allows HS1 and those that pay HS1 for access to the asset to understand the interplay between these elements and to support the options that will continue to provide good performance at the most efficient cost. For us, this is about presenting a suite of options in order to understand these sensitivities. To be clear, we are not seeking presentation of options that deliver safe but poor asset performance.

We are interested in understanding these options as we think that HS1 should have the knowledge to be able to present this now. It was not something available at the last periodic review.

Question 3

Do you have any comments on benchmarking for PR19 ?

Benchmarking can play an interesting role to inform analysis, however to draw meaningful conclusions there has to be alignment between the assets and organisations being benchmarked. We note the ORR's comments paragraph 5.13 that benchmarking on a like for like basis is difficult and agree with this. In our view, if the defining characteristics are not aligned, then robust results cannot be expected. We also agree that benchmarking and efficiency need to be supported by analysis of life cycle costing, out-turn information for CP2 and other efficiency initiatives that will be developed for the purpose of the review. We would add to this that this is an area where the ORR can leverage its internal expertise for scrutiny in respect of efficiency.

Taking this together, we are not clear on the intent of the comment in paragraph 5.12 that the main aspect for assessing efficiency will be benchmarking and would welcome more on this topic.

We also note the comment that the ORR does not anticipate undertaking its own analysis.. Does this refer to the ORR's own benchmarking analysis or more broadly its cost efficiency analysis ?

We agree that it is for HS1 to demonstrate that it has an optimal organisation of its supply chain, and that this includes how it will get the best price in CP3. As noted below, this demonstration should be irrespective of the way HS1 chooses to organise its arrangements. We believe there is opportunity for CP3 efficiency throughout its supply chain and would expect this to be demonstrated and delivered.

In respect of efficiency, we would expect HS1 to be setting, or be set, overall efficiency gain targets as part of this review, including a stretch target to focus it on ensuring that efficiency is embedded as a core aspect of its CP3 delivery.

Question 4

Do you have any views on the structure of charges for CP3, particularly to incentivise efficiency ?

In question 3, we set out our view that an overall efficiency percentage and stretch target should be set in order to encourage efficiency throughout the control period, and in question 11 our thoughts on application of detailed asset knowledge and performance to critically review maintenance and renewal plans are relevant also here.

Of particular interest is the fact that Eurostar pays disproportionately high levels of capacity reservation charges in the UK, compared with other IMs (as a proportion of the total charge). We believe this is unhelpful in terms of enabling Eurostar to respond most effectively to changes in market need. We also think that it disproportionately insulates HS1 from the commercial realities of the markets it serves compared to other infrastructure managers.

We would expect as part of this process to see HS1 demonstrate it has the correct allocations for sections of route and other allocations in its pricing model. HS1 was open on this topic in the previous periodic review and, again, this was a process that worked well.

Question 5

Do you have further thoughts and ideas on the ways which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism ?

We support the use of this mechanism in a way that enables HS1 to both share benefits and carry risk over the control period. If this can simply be "backed-to-backed" in the NR(HS) contract then HS1 will become spectators, carrying little genuine incentive.

A weakness of the present system is that it is not tracked or reported on (with operators) over the control period so we have little sense of the extent to which it is genuinely driving performance efficiency and whether that is being done in a sustainable and consistent way . For it to operate effectively, it is important that all of the inputs already demonstrate efficiency as there is a tension between specifying an easily achievable sum and gaining on outperformance versus genuine outperformance against an efficient target. We are not suggesting that this approach has been adopted by HS1, rather pointing out an inherent and important constant tension in this system that makes the need for strong challenge and scrutiny on efficiency as part of this review. If this is not calibrated correctly, it is train operators alone that fund an inefficient system.

We are interested in receiving information on the proposals that HS1 is developing in this area, and welcome the ORR's intention to scrutinise these.

Question 6

Do you think there are any other regulatory issues that emerge from HS1 Ltd's approach to contracting out the operation and maintenance of its network to Network Rail (High Speed) Ltd ?

In our view the periodic review is of HS1 Ltd's activities, including those that it contracts out as it remains ultimately responsible for efficient delivery of these. We would not expect there to be a regulatory issue associated with this as the ORR reviews HS1 Ltd, not its contractors, as part of this review.

To illustrate this: on an economic basis, if for example the costs are not thought to be efficient or otherwise acceptable, then as with other reviews it is for the ORR to determine this and HS1 to decide how it will deliver to the determination. We would not expect external, unregulated contractual arrangements to determine the outputs of this process. This is a matter for HS1 and its contractors.

We would be interested in understanding the ORR's thoughts on this question.

Question 7

Do you have any comments on our approach to Ripple Lane as part of PR19 ?

We do not have specific comments on this topic, except to note that whatever decision is taken in respect of Ripple Lane this should not negatively impact the charges that Eurostar pays.

Question 8

Do you have any comments on the performance regime and do you agree that HS1 should undertake a wholesale review of it ?

It is key that the performance regime is calibrated at the correct level in order to incentivise performance on the network. In our view, this is set at the correct level, with flexibility to incorporate new entrants when these arrive. In reaching this view, we are mindful of the now two control periods of experience of the operation of this regime, which has been positive for stakeholders including passengers. We would not wish to see a recalibration that resulted in skewed incentives, and thereby operating to dampen the effect of this regime. In this regard , we note that – as discussed in the previous periodic review – we are not confident that PDFH provides data that can be applied to a high speed passenger service

In respect of the Possessions Regime, HS1 have not, to date, had to undertake any Type 3, Type 2, or other invasive possessions on their infrastructure, and the management of possessions has been well executed. Moving forward into CP3, as the asset ages, the possibility of invasive possessions increases. In the event of any such being required, we would anticipate full consultation with both HS1 and Network Rail High Speed, with such consultation taking account of the significantly differing market peaks of EIL, domestic passenger services, and freight operators, as well as being appropriately reflected in the relevant Engineering Access Statement and Timetable Planning Rules.

Any such possessions must also seek to minimise the operational impact on the train operators. The economics of Eurostar are fundamentally different to those of PSO services especially in relation to the proportion of discretionary travel. For Eurostar, a day not running is a day's revenue lost the financial impact of which would be greater than the entire annual performance regime. We believe that HS1 should look at practices worldwide (and not just NR or Réseau) with the aim of identifying approaches that manage major works whilst keeping the railway open.

Delivery of such works to plan is also critical. EIL are subject to Passenger Rights Regulation compensation to passengers with significantly delayed train services. We believe that, for the most important possessions (outside the usual ambit of the performance regime) there is a strong case for HS1 accepting some of this risk.

The planning of any such possessions should also, as a minimum, take into account any engineering possessions that might be scheduled in Eurotunnel, and on the Northern France High Speed Line.

Question 9

How could the financial framework better incentivise efficient management of risk ?

We welcome the ORR's intention to review the approach to risk in HS1's arrangements, including those with suppliers such as NR(HS) to ensure that these follow best practice.

On pass through costs, we have a general concern about the current incentives on HS1 to prioritise and efficiently deliver on pass through costs and would welcome proposals from HS1 on how they intend to address this in the next control period 5YAMS, and challenge from the ORR on this point. While these costs move negatively, as the body incurring the charge HS1 is in a unique position to be the first line of challenge on these, and to deliver an efficient cost for the asset it must act is if it were paying the charge itself and looking to manage cost. We have seen challenge from HS1 in respect of its business rates rise, and welcome the collaborative approach it took in addressing this. This was still a significant cost increase to users and momentum must be continued to ensure it is not at risk of significant increases in subsequent valuations.

Question 10

Recognising the constraints of the Concession Agreement, what are your views on the allocation of risk between TOCs and HS1 Ltd ?

In some areas, these are balanced. For example, the performance regime as calibrated offers incentives on both sides to drive good performance.

In other areas, this allocation needs attention and it is perfectly possible to address this. Where action is required from HS1 to recalculate inputs that affect the allocation of charges, an obligation to do this within a specific timeframe is required. For example, we have experienced delay in the recalibration of our own electricity charges when evidence to support consumption has been provided. As part of this periodic review process we would like a clear obligation on HS1 to address these issues in a specified timeframe.

Similarly, in the last control period review we had a specified upgrade. Within months of the ORR's final determination, HS1 informed us that the cost of the specified upgrade for GSMR had almost doubled from the estimate presented by HS1 for the review. The risk and cost of this was borne entirely by TOCs. This was not acceptable, and with more extensive upgrades/renewals likely there must be regulatory protection to ensure it is not repeated.

We believe that the current balance of risk in the operation of the Escrow account is fundamentally flawed. The concept exists to smooth payments and give reassurance as to the ability of operators to sustain charges in "heavier" control periods. HS1 produce the forecasts (approved by ORR) which determine the escrow amounts. They invest the money and they deliver the projects. At present they only take risk on the final element of these.

Over the control period work has been done to reconsider the investment risk elements. We believe this is positive but the outcomes need to be collective. An approach which simply replicates EIL's investment policies at our risk suggests that we might as well keep the money and invest it ourselves.

That is especially the case if HS1 do not take any risk in relation to the overall adequacy of the fund, since this is principally determined by HS1's forecasts of likely future works. If HS1 can revise those forecasts without material exposure to its own business, then a system that is intended to smooth risk becomes fatally undermined and – once again – Eurostar would be no worse off simply keeping the money – investing it on our own projects – and paying on demand in future.

We believe that the current approach may have been defensible when the asset was an unknown but now would be considered over-cautious due to the leveraging of more detailed asset knowledge in order to provide realistic and efficient plans for maintenance and renewal.

Question 11

Do you consider that there are any other issues that we should take into account ?

We believe that this review is the correct time for HS1 to apply the asset knowledge that it has been building before and throughout CP2 in order to deliver an effective and efficient future plan to maintain the asset. We would expect this to include a critical evaluation of whether the initial policies recommended at the start of the asset's life are appropriate or in light of expertise are, for example, too cautious, and whether innovation in the past decade leads to more efficient ways to maintain, and for the latest asset knowledge to inform an efficient maintenance regime. We would expect this to be demonstrated during this process.

One area of particular concern relates to electricity losses on the network. The track record is of EC4T modelling being inaccurate or wrongly applied. HS1 has consistently presented a global figure for transmission losses. We have little confidence that it is accurate and believe that HS1 therefore need to accept this risk. After an unhappy recent run of EC4T issues, EIL has little appetite to find a future risk exposure which would contradict that consistently presented by HS1 to date and would ask operators to base charges on a starting assumption of transmission wasted that would be far in excess of any other network. **Question 12**

How do you think that we can develop our approach to measuring and monitoring HS1 Ltd's efficiency ?

We note the ORR's comments on this section, and await further information on the discussions that it has started to have. We support the intention that HS1 demonstrates how it is financially performing to its customers, including by reporting on efficiency improvements.

From our perspective, the review has to be balanced between bottom up and top down. Clearly the logical place to start is with a scrutiny of the inputs to determine if they are correct and efficiently costed as well as key cost drivers and big ticket items to drive an overall efficient outcome.But this needs to be balanced against a top down view. In the last control period EIL was concerned that too much weight was given to "proving" the efficiency could be delivered before it was factored in, and not enough on setting the ambitious outcome and thereby forcing ways of working and levels of resources to evolve to meet it.

Where intervention options are being considered, it will be key to involve operators in these discussions before decisions on approach are taken so that a full picture can be drawn before a decision made. For example, an efficient answer for HS1 alone may lead to a significant operational or cost impact for operators and therefore overall a higher network cost to customers for use the asset.

Question 13

Should we review the approach to indexing the OMRC for inflation ?

The ORR notes that regulated passenger train fares are RPI indexed. This is true, but not relevant for determining an indexation for this asset as a major customer, Eurostar, is a commercial stand-alone passenger train service operator. We do not operate in an RPI (or indeed any price index) uplift world. We compete in a market that includes other modes of transport including airlines, and yields have fallen. The dynamic of our market means that all costs – including regulated costs – affect our competitiveness. We closely manage our controllable costs to deliver customers a competitive offer for their business and it is key that our regulated costs are managed in a similar manner.

Put bluntly, it is inconceivable that EIL could continue to assume inflationary increases within its own managed budgets year-on-year and we would expect similar discipline from our Infrastructure Managers. The IRC element of charges inflates every 6 months under the terms of the Concession Agreement and HS1 choose to continue to charge that at the maximum level permissible under that agreement. This can only be sustainable in the markets that EIL (and ultimate HS1) serves if they find ways to absorb these inflationary pressures elsewhere (i.e. within OMRC), just as EIl is doing on our own costs.

Eurostar's position is therefore that OMRC should not be indexed (or that efficiency should at least offset any indexation).

Additionally, EIL notes that the HS1 calculations for OMRC continue to include a 1.1% uplift over and above RPI which is intended to represent the long-term assumption for input price inflation, meaning that NRHS continues to take all input price risk for the duration of the OA. We would anticipate the same principles applying here.

Once again, we are grateful to ORR for this initial consultation and to HS1 for facilitating an effective start to the periodic review processes. We look forward to continuing to work with the ORR, HS1 and all stakeholders over the coming months.

Yours faithfully

Gareth Williams

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Nigel Oatway
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10 November 2017

PR19 INITIAL CONSULTATION

This letter constitutes the response by DB Cargo (UK) Limited ('DB Cargo') to ORR's consultation document entitled "*PR19 Initial Consultation*" issued on 28 September 2017.

Introduction

1.1. DB Cargo remains of the view that the High Speed 1 Line ('HS1') continues to present a unique opportunity of a fast link from the Channel Tunnel to London enabling the transit of international rail freight services to/from the UK via the Channel Tunnel to be accelerated, consequently helping to attract further modal shift from road to rail. HS1 also presents the UK's only realistic opportunity to accommodate larger gauge traffic to/from Continental Europe which will also further promote the growth of international rail freight through the Channel Tunnel. With these factors in mind, DB Cargo has been operating regular services on HS1 since November 2011, a number of which convey larger gauge wagons. These include the recent trial train service from China to the UK. Whilst it is disappointing that the number of services DB Cargo operates on HS1 has reduced in recent years, this is primarily the result of factors remote from HS1.

1.2. DB Cargo is, therefore, pleased to respond to ORR's initial consultation document which sets the scene for the formal processes by which ORR will carry out its Periodic Review of HS1 Limited ('PR19') for Control Period 3 covering the period between 1 April 2020 and 31 March 2025. DB Cargo is already encouraged by the open and collaborative approach the parties (HS1 Limited, Network Rail (High Speed) Limited ("NRHS"), ORR) have adopted thus far in respect of stakeholder engagement and it hopes that this will continue throughout the PR19 process.

Key issues

2.1. In DB Cargo's view, the key issue in ensuring that the regular operation of international rail freight services on HS1 continues, and indeed grows, relates to the price of access to the route.

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2.2. To facilitate and encourage the use of HS1 for international rail freight during Control Period 1 (1 April 2010 - 31 March 2015), HS1 Limited, with the financial support of the Department for Transport ("DfT"), applied the mechanism contained in paragraph 6 of Schedule 3 to the Railways Infrastructure (Access and Management) Regulations 2005 to introduce a discount (of around 40%) to the access charges for international rail freight services operating overnight on HS1.

2.3. The rail freight industry warmly welcomed this approach as a positive step by both HS1 Limited and DfT to encourage and support the growth of international rail freight. Consequently, the introduction of the discount played a direct part in enabling the introduction and growth of DB Cargo's international rail freight services on HS1. Given that the economics of international conventional rail freight are so fragile, it is probable that the introduction and subsequent growth of rail freight services on HS1 would not have occurred had the discount not been in place.

2.4. However, certainty and stability are crucial factors for the continuation and growth of the rail freight industry, particularly in respect of international rail freight which needs to overcome significant obstacles in managing transits across many different railway infrastructures and international borders. Following the removal of the discount at the commencement of Control Period 2, the charging regime then adopted the approach of apportioning HS1 Limited's freight costs across an expected level of freight traffic in order to calculate a rate per train kilometre. In order to address the situation of the expected level of traffic failing to materialise (or is exceeded), there is an annual volume adjustment mechanism to calculate and set a new rate for the following year based on the actual traffic levels operated during the preceding year.

2.5. Following the devastating effects of the migrant crisis on cross-Channel rail freight during the summer of 2015, traffic levels on HS1 reduced dramatically from around 70 trains per month down to less than 30. Traffic levels have recovered slightly since then and there are now normally around 40 freight services per month operating on HS1. However, this is still way short of the previous (and expected) traffic levels and, therefore, as a result of the adjustment mechanism mentioned above, this has led to a significant rise in the price of access for freight services on HS1 from £4.00 per train kilometre at the end of Control Period 1 to £7.27 currently, representing an increase of around 55%.

2.6. Increases on these scales have a significant impact on the attractiveness of HS1 for international rail freight which can result in curtailed growth and perhaps forcing existing services to cease altogether. Such effects can be evidenced by the fact that rail freight services on HS1 remain at 50% below previous levels. Given that the current international freight services operating on HS1 (owing to their larger gauge requirements) cannot use domestic rail routes as an alternative, it is likely that the goods conveyed have/would revert to using long distance road transport. This would be very unfortunate given the significant efforts of the relevant parties (including HS1 Limited, DfT and DB Cargo) in Control Period 1 to nurture and promote the use of HS1 for international rail freight. Addressing the spiralling increases in the price of access to HS1 for freight is, therefore, of crucial importance in DB Cargo's view.

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2.7. Of course, one way of addressing this is to reduce the level of HS1's freight costs and DB Cargo hopes that HS1 Limited will again, as part of PR19, be reviewing such costs with the aim of achieving significant reductions, particularly in pursuing the transfer of Ripple Lane Exchange Sidings to Network Rail Infrastructure Limited ("Network Rail").

2.8. Other important factors required to promote the growth of rail freight services on HS1 include:

- the capability to operate rail freight services at 100 kph as well as 120 kph or higher (*This is a key requirement for rail freight to achieve the original objective for freight on HS1 set by the House of Commons Committee on the Channel Tunnel Rail Link Bill that "the Link should be capable in every way of carrying as much freight as possible*");
- improved capability to enable the current limits on the trailing weight of freight services to be increased;
- the availability of suitable and sufficient capacity (including capacity availability overnight not being unreasonably constrained by engineering work);
- an affordable performance regime; and
- the commissioning of links to the national railway infrastructure to increase the range of journey opportunities.

ORR's Specific Questions

Q1. Do you have any comments on the timetable or the structure of the 5YAMS?

3.1. DB Cargo considers that the timescales set out in chapter 4 of the consultation document appear challenging but seem entirely achievable. DB Cargo also considers that the elements expected to be included in the 5YAMS (paragraph 4.12 of the consultation document) appear appropriate although in the interests of transparency, it would expect to see any freight issues and costs identified and explained separately.

Q2. Do you think that HS1 Ltd should present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges?

3.2. DB Cargo considers that HS1 Limited should indeed present options that comply with the concession agreement and safety obligations but with lower levels of asset performance to reduce charges. Having such options will enable all stakeholders to make informed and balanced choices between levels of performance and levels of charges.

Q3. Do you have any comments on benchmarking for PR19?

3.3. As far as DB Cargo is aware, HS1 is the only high-speed line that was designed to permit the operation of conventional rail freight services. Therefore, DB Cargo is concerned to ensure that in seeking to benchmark HS1 against other high-speed railway networks in other countries, both in Europe and beyond, that this does not lead to additional costs being inappropriately weighted toward the operation of conventional

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freight or any other disadvantages that could result from an analysis that does not take this difference into account.

3.4. DB Cargo considers that it may be difficult for NRHS to match other maintainer's costs for the maintenance of certain freight-only infrastructure, particularly yards and sidings, because it believes NRHS may not have separate standards for such maintenance. This could result in maintenance, operation and renewal costs being higher than otherwise need to be the case if separate and more applicable standards for the maintenance of freight yards and sidings are applied.

3.5. DB Cargo, therefore, considers that HS1 Limited should also carry out some benchmarking of its freight assets, particularly the Ripple Lane Exchange Sidings which are the largest contributor to the current level of freight costs of HS1 against examples of other similar sidings in the UK maintained by third party facility operators.

Q4. Do you have any views on the structure of charges for CP3, particularly to incentivise efficiency?

3.6. DB Cargo considers that the structure of charges enabling freight operators to pay only the incremental costs should remain for Control Period 3 as this reflects the charging structure that applies to international rail freight traffic that operates on Network Rail's domestic network. However, as mentioned earlier in this response, the current method for converting costs into charges for freight traffic on HS1 (i.e. the annual volume adjustment mechanism) can, and indeed has, led to annual price shocks which significantly affects the certainty and stability that freight operators and their customers require.

3.7. DB Cargo hopes that the PR19 process will help identify ways in which the chances of such annual price shocks can be mitigated.

3.8. Furthermore, DB Cargo understands that that freight operators only pay incremental costs unless the services concerned can afford to pay a 'mark-up'. However, the current freight access charge of £6.71 is made up of a variable element (£2.77 per train kilometre) representing the variable operations, maintenance and renewal costs ("OMRCA1") and an element reflecting the freight avoidable costs (£3.74 per train kilometre) ("OMRCA2") (all in February 2013 prices).

3.9. Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the Regulations") provides the following stipulations:

- *Sub-paragraph 1(4) - Without prejudice to sub-paragraph (8) the charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 must be set at the cost that is directly incurred as a result of operating the train service.*

- *Sub paragraph 2(1) - In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail and Road or, in relation to a rail link facility, the Secretary of State, may levy mark-ups on the*

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basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.

- *Sub-paragraph 2(3) - The effect of sub-paragraphs (1) and (2) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.*

3.10. On the national domestic network, all freight services pay a variable usage charge thus conforming to sub-paragraph 1(4) of Schedule 3 of the Regulations. In addition, those freight services which are deemed by ORR to be able to afford a ‘mark-up’ on top of the variable usage charge pay a contribution to the freight avoidable costs of the national domestic network. This conforms to sub-paragraphs 2(1) and 2(3) of Schedule 3 of the Regulations.

3.11. Given that the Regulations apply equally to both the national domestic network in the UK and HS1, if these same principles are also applied to access charges for freight services on HS1, DB Cargo questions whether both elements of the HS1 freight access charge (i.e. the OMRCA1 and the OMRCA2) should be levied on freight services that cannot afford to pay a ‘mark-up’. Given that the freight services on HS1 belong to a market segment that ORR has deemed cannot afford to pay a ‘mark-up’, DB Cargo considers that this would imply that to conform to the Regulations, such services should only pay the variable element of HS1 Limited’s freight access charge (i.e. £2.77 per train kilometre) as the £3.74 per train kilometre representing the freight avoidable costs element would be considered as a ‘mark-up’.

Q5. Do you have any further thoughts and ideas on the ways in which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism?

3.12. HS1 Limited’s freight specific assets (e.g. the Ripple Lane Exchange Sidings) contribute the major proportion of costs that currently make up the access charge for freight services on HS1. Such assets do not, in DB Cargo’s view, need to be maintained to the same demanding tolerances that those assets required to support high-speed trains on HS1 are to be maintained to. DB Cargo has considerable experience in maintaining and operating freight specific infrastructure, particularly yards and sidings. It, therefore, believes it can assist HS1 Limited with its review of the freight costs of HS1 with the aim of identifying efficiencies which would reduce the costs of rail freight and in turn reduce access charges for freight services on HS1.

Q6. Do you think there are any other regulatory issues that emerge from HS1 Ltd’s approach to contracting out the operation and maintenance of its network to Network Rail (High Speed) Ltd.?

3.13. As mentioned in paragraph 2.8 above, an important factor for the continued growth of rail freight services on HS1 is the availability of suitable and sufficient capacity

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throughout the day (including capacity availability overnight not being unreasonably constrained by engineering work). DB Cargo, therefore, considers that the PR19 process should also consider introducing a regime through the Asset Management Statement that incentivises HS1 Limited to be more flexible with regard to the operation of rail freight services overnight at the same time as undertaking necessary engineering work.

3.14. The default position should not, in DB Cargo's view, result in a maintenance regime that assumes blanket network closures to accommodate HS1 Limited's engineering contractors current working practices. A more balanced approach is instead required between the needs of freight operators on the one hand and the needs of HS1 Limited to maintain its network on the other. HS1 was designed to allow the continued operation of trains during most routine maintenance so DB Cargo considers that HS1 Limited (through its contractors) should be incentivised to use and offer this flexibility to the full.

Q7. Do you have any comments on our approach to Ripple Lane as part of PR19?

3.15. DB Cargo has continually expressed its firm view to HS1 Limited, and other relevant industry stakeholders, that Ripple Lane Exchange Sidings ("the facility") should be transferred to Network Rail as soon as possible to be incorporated back into the national domestic network. DB Cargo strongly believes that such a transfer would be in the best interests of the rail industry as a whole. The reasons for DB Cargo's view in this respect include that the:

- infrastructure within the facility is not "high speed" and is located remotely from the "high speed" lines;
- facility is used by over 5 times as many freight services emanating from Network Rail's network than it is by freight services emanating from HS1;
- facility is already operated by Network Rail; and
- maintenance and operation of the facility would be subject to the same efficiency targets that Network Rail is expected to achieve for other freight-only infrastructure on the national domestic network, thereby reducing industry costs.

3.16. DB Cargo understands that discussions are currently ongoing between HS1 Ltd and Network Rail with regard to the transfer and hopes that it will be achieved, if not for the start of Network Rail's Control Period 6 (i.e. 1 April 2019) then certainly in time for the commencement of HS1 Limited's Control Period 3 (i.e. 1 April 2020).

3.17. Although DB Cargo acknowledges that ORR cannot direct a transfer of ownership of the facility from HS1 Limited to Network Rail (or indeed any other party), it believes that the transfer is a matter that still needs to be considered as part of PR19 because of the significant amount of costs that the facility adds to HS1 Limited's freight avoidable costs.

3.18. DB Cargo would find it unacceptable if the Control Period 3 freight access charges for HS1 were based on a freight costs figure that included a facility that had subsequently been transferred out of HS1's ownership. Therefore, DB Cargo disagrees with ORR's approach and instead submits that the ownership issue of the facility needs to be monitored and taken into account accordingly in the PR19 process to ensure HS1 Limited's freight costs continue to reflect the actual costs of its relevant assets.

3.19. Notwithstanding DB Cargo's comments expressed in paragraph 3.18 above, in the event that a transfer of ownership of the facility does not occur, it agrees with ORR's approach to review the current charge levied by HS1 Limited for access to the facility.

Q8. Do you have any comments on the performance regime and do you agree that HS1 Ltd should undertake a wholesale review of it?

3.20. The structure of the performance and possessions regimes appears to be working well in DB Cargo's view and, consequently, it agrees that a wholesale review may not be necessary.

3.21. However, as mentioned earlier in paragraph 2.8 of this response, DB Cargo considers that an affordable performance regime is an important factor to enable the growth of rail freight services on HS1. The current extremely high per minute of delay payment rate that applies on HS1, particularly in respect to international passenger services, effectively precludes the operation of freight services during much of the day as a single incident could result in a severe financial penalty to a freight operator. DB Cargo, therefore, considers that whether or not there is a wholesale review of the structure of the performance and possession regimes, there ought certainly to be a review of the metrics used within those regimes.

3.22. DB Cargo understands that Part B (Performance Monitoring) of HS1 Limited's Network Code relies on Network Rail's Delay Attribution Guide that applies to the national domestic network.

3.23. That guide, now entitled "Delay Attribution Principles and Rules" is amended through the auspices of the Delay Attribution Board, a body that is not recognised in HS1 Limited's Network Code. Instead, HS1 Limited's Network Code provides that changes can be made to the Delay Attribution Guide in accordance with Part C of the HS1 Limited Network Code.

3.24. In practice, DB Cargo believes that HS1 Limited's delay attribution process merely uses Network Rail's "Delay Attribution Principles and Rules" as amended from time to time through Network Rail's Network Code and does not implement the relevant processes in its own Network Code. This means that if there are any train operators on HS1 that are not also party to Network Rail's Network Code, such train operators will have no say in the changes that are made to Network Rail's "Delay Attribution Principles and Rules" as applied to delay attribution on HS1. DB Cargo believes, therefore, that this inconsistency needs to be addressed because as time goes by, Network Rail's Delay Attribution and Rules will diverge further and further from HS1 Limited's Delay Attribution Guide.

Q9. How could the financial framework better incentivise efficient management of risk?

3.25. DB Cargo has no representations to make on this aspect of PR19 other than supporting ORR's intention to ensure HS1 Limited's approach to risk follows industry best practice.

Q10. Recognising the constraints of the Concession Agreement, what are your views on the allocation of risk between the TOCs and HS1 Ltd?

3.26. DB Cargo has not yet formed any views on this aspect of PR19 other than considering that risk allocation should be properly balanced between HS1 Limited and the relevant train operators.

Q11. Do you consider that there are any other issues that we should take into account?

3.27. Prior to the commencement of Control Period 3, it is planned that the UK will leave the European Union ("Brexit"). Given that a significant proportion of services that use HS1 (both passenger and freight) are international services that go to or come from mainland Europe via the Channel Tunnel, DB Cargo considers that ORR and HS1 Limited should consider whether or not there will be any implications (both cost and otherwise) for HS1 from the Brexit process, particularly in respect of the areas of customs and border control.

3.28. As alluded to earlier in the responses to question 4 above, since PR14, the Railways Infrastructure (Access and Management) Regulations 2005 have been replaced by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. DB Cargo considers that ORR should ensure that the structure of charges applying to HS1 conforms to those new regulations.

Q12. How do you think that we can develop our approach to measuring and monitoring HS1 Ltd's efficiency?

3.29. DB Cargo believes that ORR should consider whether there are any parallels here with the way in which it monitors and measures the efficiency of Network Rail. In addition, DB Cargo believes that ORR should consider whether there are any approaches that are adopted by other regulators around Europe in these areas in respect of other high speed railways that may also be appropriate to inform an approach for HS1.

Q13. Should we review the approach to indexing the OMRC for inflation?

3.30. DB Cargo considers that the approach to indexing OMRC for inflation should be reviewed although not for the reasons outlined in the consultation document. DB Cargo considers that a more appropriate approach to indexation would be to compare the changes in annual average of the particular index adopted (whether RPI or CPI) rather than comparing changes in that index for a particular month as is currently the case (i.e. February). Using annual averages in DB Cargo's view would better ensure that significant peaks or troughs in indices that can occur in particular months which can consequently create unrepresentative or inappropriate uplifts or reductions, would not occur if annual averages are used.

...

Final Remarks

4.1. Finally, in addition to its representations made in this response, DB Cargo intends to continue to provide its input throughout the PR19 process through stakeholder sessions, individual meetings with ORR/HS1 Limited and future consultation documents.

Yours sincerely,

Nigel Oatway
Access Manager

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PR19 Programme Team.
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10th November 2017

Dear Sir,

GB Railfreight Limited's response to PR19 (HS1) Initial Consultation:

Thank you for the opportunity to comment on this initial consultation for Period Review 19 for HS1 Limited. My response will be limited to emphasising the salient points that, in GB Rail freight's view, need to be addressed as part of this PR19 review. More detailed responses will be provided throughout the HS1 PR19 review process.

General Points:

GB Railfreight (GBRf) has a track access contract with HS1 Limited and has operated a variety of services along the infrastructure over several years. As well as Channel Tunnel Intermodal freight services along HS1 to Barking, GBRf has operated special stock movements (e.g. newly delivered Eurostar trains from the continent to Temple Mills Depot) and also regular maintenance trains for HS1 infrastructure, in conjunction with Eurotunnel.

During this time, GB Railfreight has not seen any evidence that HS1 Ltd. wishes to develop and provide any incentives to reduce the cost of access to its infrastructure nor does it note any desire from HS1 to do so.

GBRf, also, does not believe that HS1 Ltd. wishes to accommodate freight services, even in limited numbers, onto its infrastructure. This is borne out by its disruptive engineering access strategy for freight, its punitive performance regime and lack of any real progress between GBRf and HS1 to bring about any changes over the last 2-3 years, despite GBRf's best efforts.

The biggest inhibitor to any freight growth along HS1 is the large number of overnight all line blocks each week, between the tunnel and the St. Pancras area, which stops freight just at the time when it's best to run and be segregated from passenger services. What is desperately needed is one line always open overnight, along HS1 to/from the tunnel, to permit freight traffic to run with some certainty and for traffic to grow over time.

There really is no clarity, in any HS1 strategy, for how freight services are to become more efficient, have a higher velocity and grow in number over future Control Periods. Some positive strategy on this part of HS1 operation would be very welcome.

ORR really does need to look, very closely, at the following parts of Section 4 of the Railways Act (1993), with regard to HS1 Ltd.'s operation, as GBRf believes these items are not embedded in the operating philosophy of HS1:

- To protect the interests of users of railway services.
- to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable.
- to contribute to the development of an integrated system of transport of passengers and goods.
- to promote efficiency and economy on the part of persons providing railway services.
- to promote competition in the provision of railway services for the benefit of users of railway services**.**
- to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

As stated in this consultation document, the primary business of HS1 Ltd. is to provide high-speed rail access to domestic and international passenger *and international rail freight services* (my italics). With approximately 80% of the 52 weeks per annum affected by all-line overnight blocks between London and the Channel Tunnel, it's clear that HS1 is not providing access for international freight services. In many cases, HS1 provides the only gauge-cleared route for specific types of Intermodal services so there is not even an alternative route to use.

All of the above points need to be taken into account, and reviewed, as part of Periodic Review 19 as it is clear that the operation of HS1, up to the end of CP2, will have been based solely with passenger services in mind.

For CP3 and beyond, it isn't clear what the renewals strategy is and, whether or not, it will mean even more restrictive access for freight along HS1. Without this knowledge, GBRf will not be able to plan the future of its business with any real degree of reassurance and certainty.

<u>Ripple Lane Exchange Sidings</u>: GB Railfreight understands that the ownership issue is not part of the PR19 Review however this specific part of HS1 Ltd. infrastructure has been the subject of much debate over the last few years. The fact that North Thameside end-users of domestic freight terminals, accessed through Ripple Lane HS1 Exchange Sidings, have to pay a "ransom-strip" access fee, to go from Network Rail infrastructure to their own infrastructure, is a very backward step indeed.

This whole issue of charging, and its outcome has brought great uncertainty to our end-customers, in the area, with regard to both additional access charges, since 1st April 2016, and how these might change in the future. A decline in international freight traffic (via HS1) into Ripple Lane could have a very marked effect on domestic operations, e.g. the Dagenham Ford rail traffic, and the risk of this "unknown" may be seen to be too great by our domestic customers. Very careful thought needs to be given to resolving this problem.

Ideally, users of the domestic freight terminals who, before the Network Change establishment for HS1 Ripple Lane Exchange Sidings, did not pay an access fee per train movement, should not be paying now or in the future.

Performance Regime: The current HS1 Ltd. performance regime, and especially the minimum payment cap (£500K), between a FOC and HS1 Ltd., is a real disincentive to running services along HS1 infrastructure. Especially when there are not a large number of GBRf trains planned to use the infrastructure, this performance cap brings too much risk into introducing new freight trains to the route.

An even worse "double penalty" scenario regularly occurs – in one of the many weeks when there are all-line blocks on HS1, between London and the Channel Tunnel, freight trains cannot run as booked and are often re-timed several hours later to pass the affected area once the possession has finished. That later re-timing then puts the freight service into a period of the timetable where there is more interaction with early morning empty stock and passenger trains, thus pushing an additional huge risk on to the freight operator.

For these reasons and those stated at the beginning of this letter, this part of the performance regime needs altering to align with those Section 4 duties of the Railways Act 1993.

GB Railfreight will contribute, in more detail, as the PR19 consultation progresses.

Yours sincerely,

Ian Kapur.
National Access Manager.